

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

HB

UNITED STATES OF AMERICA

v.

ERIC ROBERT RUDOLPH,
Defendant

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NO. CR-00-S-422-S

**UNITED STATES'S RESPONSE TO DEFENDANT'S
MOTION TO EXTEND TIME FOR FILING RULE 12 NOTICES**

Comes Now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, and Michael W. Whisonant, William R. Chambers, Jr., and Robert Joe McLean, Assistant United States Attorneys, and files this Response to the defendant's Motion to Extend Time For Filing Rule 12 Notices. The United States respectfully objects to any extension of time for filing Rule 12 notices and submits that the defendant's motion should be denied. In support thereof the United States states as follows:

1. The Court's Order entered on June 24, 2004 set out a series of deadlines in the above-styled case. The defendant's deadline for filing notices under Rule 12 of the Federal Rules of Criminal Procedure was August 13, 2004. Instead of filing his notices, the defendant filed, on the deadline date, a motion to extend the time for

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filing for such notices. The motion went on to ask that a new deadline of December 15, 2004 be established. Defense counsel has known about this deadline since June 24, 2004, yet they waited until the deadline date to file a motion seeking almost 4 months of additional time in which to file their notices.

2. The defendant has been in custody for more than 14 months. Present defense counsel has been appointed to the case for more than 8 months. After that length of time diligent defense counsel should be able to say whether they were going to rely on an alibi defense and give the necessary notice required by Rule 12.1. Furthermore, defense counsel has had time for sufficient contact with the defendant and investigation to determine whether Rudolph should be examined by a medical professional to determine whether expert evidence relating to a mental disease or defect or any other mental condition of the defendant will be brought to bear by the defense. The bare bones notice required by Rule 12.2 should present no problem to counsel at this juncture.

3. Should the defendant choose to rely upon an alibi defense, the United States will need sufficient time to investigate each specific place where the defendant claims to have been at the time of the alleged offense and to interview any witnesses who might support the defendant's claim. Such an investigation will take time to conduct. If the Court extends the deadline as requested by the defense, the attorneys for the

United States will have to conduct that investigation while heavily involved in pre-trial hearings, witness preparation and jury selection.

4. A similar argument can be made regarding a delayed filing of notice of intent to rely on an insanity or other mental competency defense. Should the defendant make such a claim it will be incumbent upon the United States to ask that the defendant be examined by independent medical professionals. Such an examination would likely require the defendant to be sent to a federal facility in another state. Permitting the defense to unnecessarily delay giving notice will likely result in additional delays in the trial of this case.

5. The United States has met each deadline in the Court's Order of June 24, 2004. The defendant has sought and received an extension of time on an earlier deadline imposed by this Court's Order. The deadline for filing supplemental juror questionnaires was July 12, 2004. The United States met that deadline. The defense did not. Instead the defense asked for a 5 month extension which was granted by the Court. Defense counsel's continued failures to meet deadlines will likely result in a substantial delay in the trial of this case. This appears to be a deliberate strategy by defense counsel. This court has granted defendant extraordinary legal defense resources. Counsel is capable of meeting reasonable deadlines set by this Court,

without further delaying the justice due to the citizens of the Northern District of Alabama.

For the foregoing reasons, the United States opposes the defendant's Motion To Extend Time For Filing Rule 12 Notices. The United States respectfully requests that the Court deny defense counsel's motion.

Respectfully submitted this the 18th day of August, 2004.

ALICE H. MARTIN
United States Attorney

A handwritten signature in black ink, appearing to read "Michael W. Whisonant", written in a cursive style.

MICHAEL W. WHISONANT
Assistant United States Attorney


CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date, August 18, 2004, by First Class, United States mail, postage prepaid, to his attorneys of record:

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